SUPREME COURT OF THE UNITED STATES

No. 74-466

John T. Dunlop, Secretary of Labor, Petitioner, v. Walter Bachowski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June 2, 1975]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On February 13, 1973, the United Steelworkers of America (USWA) held District Officer elections in its several districts. Respondent Bachowski was defeated by the incumbent in the election for that office in District 20.[1] After exhausting his remedies within USWA, respondent filed a timely complaint with petitioner, Secretary of Labor, alleging violations of § 401 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U. S. C. § 481, thus invoking 29 U. S. C. § 482 (a)(b) that requires that the Secretary investigate the complaint and decide whether to bring a civil action to set aside the election.[2] Similar complaints were filed

[1] The result of the election was as follows:

Kay Kluz (incumbent)	10,558
Walter Bachowski (respondent)	9,651
Morros Brummett	3,566

[2] 29 U. S. C. § 482 provides:

"(a) A member of a labor organization—

"(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

"(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

respecting five other district elections. After completing his investigations, the Secretary filed civil actions to set aside the elections in only two districts. In respect of the election in District 20, he advised respondent by letter dated November 7, 1973, that "based on the investigative findings, it has been determined . . . that civil action to set aside the challenged election is not warranted."

On November 7, 1973, respondent filed this action against the Secretary and USWA in the District Court for the Western District of Pennsylvania.[3] The complaint asked that, among other relief, "the Court declare the actions of the Defendant Secretary to be arbitrary and capricious and order him to file suit to set aside the aforesaid election." The District Court conducted a hearing on November 8, and after argument on the ques-

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may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title . . . . The challenged election shall be presumed valid pending a final decision thereon . . . and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

"(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary . . . ."

[3] The complaint was filed on the date, November 7, 1973, of the letter quoted in the text. The complaint alleges that on November 5, respondent "received a phone call from the Pittsburgh office of the Defendant Secretary of Labor advising him that the Defendant Secretary had decided not to file suit to set aside the contested election in District 20 USWA."

tion of reviewability of the Secretary's decision, concluded that the court lacked "authority" to find that the action was capricious and to order him to file suit. Civil Action No. 73–0954, W. D. Pa., Doc. 9, p. 27. The hearing was followed by an order dated November 12, dismissing the suit.[4] The Court of Appeals for the Third Circuit reversed, 502 F. 2d 79 (1974).

The Court of Appeals held *first* that the District Court had jurisdiction of respondent's suit under 28 U. S. C. § 1337 as a case arising under an Act of Congress regulating commerce, the LMRDA, 502 F. 2d, at 82–83; *second*, that the Administrative Procedure Act, 5 U. S. C. §§ 702 and 704, subjected the Secretary's decision to judicial review as "final agency action for which there is no other adequate remedy in a court," § 704, and that his decision was not, as the Secretary maintained, agency action pursuant to "(1) statutes [that] preclude judicial review; or (2) agency action [that] is committed to agency discretion by law," excepted by § 701 (a) from judicial review,

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[4] The Order of November 12 recites that "it is determined that this Court lacks jurisdiction over the subject matter of this Complaint." In view of our result, it is immaterial whether the dismissal was on the ground of lack of jurisdiction or of nonreviewability, or on both grounds.

[5] Section 606 of LMRDA, 29 U. S. C. § 526, provides:

"The provisions of the Administrative Procedure Act shall be applicable to . . . any adjudication, authorized or required pursuant to the provisions of this chapter." The pertinent provisions of the Administrative Procedure Act, 5 U. S. C. §§ 701–706, provide:

"§ 702—A person suffering legal wrong because of agency action . . . is entitled to judicial review thereof.

"§ 704—Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. . . .

"§ 706— . . . [T]he reviewing court shall—

. . . . . .

id., at 83–88; [5] and *third* that the scope of judicial review—governed by § 706 (2)(A), "to ensure that the Secretary's actions are not arbitrary, capricious, or an abuse of discretion," *id.*, at 90—entitled respondent, who sought "to challenge the factual basis for [the Secretary's] conclusion either that no violations occurred or that they did not affect the outcome of the election," *id.*, at 89, "to a sufficiently specific statement of the factors upon which the Secretary relied in reaching his decision . . . so that respondent may have information concerning the allegations contained in his complaint." *Id.*, at 90.[6] We granted certiorari, 419 U. S. 1068 (1974).

We agree that 28 U. S. C. § 1337 confers jurisdiction upon the District Court to entertain respondent's suit, and that the Secretary's decision not to sue is not excepted from judicial review by § 701 (a) of the Administrative Procedure Act; rather, §§ 702 and 704 subject the Secretary's decision to judicial review under the standard specified in § 706 (2)(A). We hold, however, that the Court of Appeals erred insofar as its opinion construes § 706 (2)(A) to authorize a trial-type inquiry into the factual bases of the Secretary's conclusion that no violations occurred affecting the outcome of the election. We accordingly reverse the judgment of the

"(2) hold unlawful and set aside agency action . . . found to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . .

"§ 701—(a) This chapter applies . . . except to the extent that—

"(1) statutes preclude judicial review; or

"(2) agency action is committed to agency discretion by law . . . ."

[6] The closing sentence of the opinion as originally filed on July 26, 1974, required the District Court to permit respondent "to examine the data and reports" upon which the Secretary relied. The present version was substituted by order dated September 3, 1974, which also added n. 17, reciting the Court of Appeals' recognition that certain data in the Secretary's files may be privileged and confidential.

Court of Appeals insofar as it directs further proceedings on remand consistent with the opinion of that court, and direct the entry of a new judgment ordering that the proceedings on remand be consistent with this opinion of this Court.

I

LMRDA contains no provision that explicitly prohibits judicial review of the decision of the Secretary not to bring a civil action against the union to set aside an allegedly invalid election. There is no such prohibition in 29 U. S. C. § 483. That section states "[t]he remedy provided by this subchapter for challenging an election already conducted shall be exclusive." Certain LMRDA provisions concerning pre-election conduct, 29 U. S. C. §§ 411–413 and 481 (c) are enforceable in suits brought by individual union members. Provisions concerning the conduct of the election itself, however, may be enforced only according to the post-election procedures specified in 29 U. S. C. § 482. Section 483 is thus not a prohibition against judicial review but simply underscores the exclusivity of the § 482 procedures in post-election cases.

In the absence of an express prohibition in LMRDA, the Secretary therefore bears the heavy burden of overcoming the strong presumption that Congress did not mean to prohibit all judicial review of his decision. "The question is phrased in terms of 'prohibition' rather than 'authorization' because a survey of our cases shows that judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 140 (1967). ". . . [o]nly upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review." *Id.*, at 141. See also *Rush* v. *Cort*, 369 U. S. 367, 379–380 (1962),

Citizens of Overton Park v. *Volpe*, 401 U. S. 402, 410 (1971).

The Secretary urges that the structure of the statutory scheme, its objectives, its legislative history, the nature of the administrative action involved, and the conditions spelled out with respect thereto, combine to evince a congressional meaning to prohibit judicial review of his decision.[7] We have examined the materials the Secretary relies upon. They do not reveal to us any congressional purpose to prohibit judicial review. Indeed, there is not even the slightest intimation that Congress gave thought to the matter of the preclusion of judicial review. "The only reasonable inference is that the possibility did not occur to the Congress." *Wirtz* v. *Glass Bottle Blowers*, 389 U. S. 463, 468 (1968).

We therefore reject the Secretary's argument as without merit. He has failed to make a showing of "clear and convincing evidence" that Congress meant to prohibit all judicial review of his decision. In that circumstance, courts "are necessarily [not] without power or jurisdiction . . . if it should clearly appear that the Secretary has acted in an arbitrary or capricious manner in ignoring the mandatory duty he owes plaintiff under the power granted by the Congress. *Leedom* v. *Kyne*, 358 U. S. 184 (1958)." *DeVito* v. *Schultz I*, 300 F. Supp. 381, 382 (1969). But see *Ravaschieri* v. *Shultz*, 75 L. R. R. M. 2272 (1970); *McArthy* v. *Wirtz*, 65 L. R. R. M. 2411 (1967), *Katrinic* v. *Wirtz*, 62 L. R. R. M. 2557 (1966). Our examination of the relevant materials persuades us, however, that although no purpose to prohibit all judicial review is shown, a congressional purpose narrowly to limit the scope of judicial review of the Secretary's decision can,

[7] We agree with the Court of Appeals, for the reasons stated in its opinion, 502 F. 2d, at 86–88, that there is no merit in the Secretary's contention that his decision is an unreviewable exercise of prosecutorial discretion.

and should, be inferred in order to carry out congressional objectives in enacting LMRDA.

II

Four prior decisions of the Court construing LMRDA identify the congressional objectives and thus put the scope of premissible judicial review in perspective. Congress "decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest . . . [and] decided not to permit individuals to block or delay union elections by filing federal-court suits. . . ." [8] *Calhoon* v. *Harvey*, 379 U. S. 134, 140 (1964). Congress' concern was "to settle as quickly as practicable the cloud on the incumbent's title to office," *Wirtz* v. *Glass Bottle Blowers, supra*, 389 U. S., at 468 n. 7, and in "deliberately [giving] exclusive enforcement authority to the Secretary . . . emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member . . . ." *Id.*, 473–475. ". . . it is most improbable that Congress

[8] See S. Rep. No. 187, 86th Cong., 1st Sess., at 7, I Leg. Hist. 403:

"In acting on this bill [S. 1555] the committee followed three principles: 1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. . . . [I]n establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents. 2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs . . . . 3. Remedies for the abuses should be direct . . . . [T]he legislation should provide an administrative or judicial remedy appropriate for each specific problem.

"See also *ibid.*: 'The bill reported by the committee, while it carries out all the major recommendations of the [McClellan] Committee, does so within a general philosophy of legislative restraint."

deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities, yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint . . . . The expertise and resources of the Labor Department were surely meant to have a broader play . . . ." *Wirtz* v. *Laborers' Union*, 389 U. S. 477, 482–483 (1968). ". . . Congress made suit by the Secretary the exclusive post-election remedy for two principal reasons; (1) to protect unions from frivolous litigation and unnecessary judicial interference with their elections, and (2) to centralize in a single proceeding such litigation as might be warranted . . . ." *Trbovich* v. *United Mine Workers*, 404 U. S. 528, 532 (1972). ". . . Congress intended to prevent members from pressing claims not thought meritorious by the Secretary, and from litigating in forums or at times different from those chosen by the Secretary." *Id.*, at 536. ". . . The statute gives the individual union members certain rights against their union and 'the Secretary of Labor in effect becomes the union member's lawyer' for purposes of enforcing those rights . . . ." *Id.*, 538–539.

Glass Bottle Blowers reveals two more considerations pertinent to determination of the scope of judicial review. Section 482 (b) leaves to the Secretary, in terms, only the question whether he has probable cause to believe that a violation has occurred, and not also, in terms, the question whether the outcome of the election was probably affected by the violation. *Bottle Blowers* construed § 482 (b), however, as conferring upon the Secretary discretion to determine both the probable violation and the probable effect. ". . . the Secretary may not initiate an action until his own investigation confirms that a violation . . . probably infected the challenged election." 389 U. S., at 472. See also *Schonfeld* v. *Wirtz*, 258 F. Supp. 705, 707–708 (1966).

In addition, in rejecting the argument that the unlawfulness infecting a challenged election could be washed away by an intervening unsupervised union election, the Court stated, 389 U. S., at 474:

> ". . . Congress' evident conclusion that only a supervised election could offer assurances that the officers who achieved office as beneficiaries of violations of the Act would not by some means perpetuate their unlawful control in the succeeding election . . . was reached in light of the abuses surfaced by the intensive congressional inquiry showing how incumbents use their inherent advantage over potential rank and file challengers established and perpetuated dynastic control of some unions . . . . These abuses were among the 'number of instances of breach of trust . . . [and] disregard of the rights of individual employees' . . . upon which Congress rested its decision that the legislation was required in the public interest." [9]

Two conclusions follow from this survey of our decisions: (1) since the statute relies upon the special knowledge and discretion of the Secretary for the determination of both the probable violation and the probable effect, clearly the reviewing court is not authorized to substitute its judgment for the decision of the Secretary

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[9] Respondent referred at oral argument to the following statement in the Brief Amicus of United Mine Workers of America: "The struggle by UMWA members to overturn tyranny in their Union was a lonely and difficult one in part because of apathy and indifference, if not outright prejudice against them, by the officials of the United States Department of Labor, purportedly the guardians of Union members' rights under LMRDA. Too often, union reformers have found the Department of Labor allied with union incumbents against their interests."

No issue of this nature is raised by respondent's complaint in this case.

not to bring suit; (2) therefore to enable the reviewing court intelligibly to review the Secretary's determination, the Secretary must provide the court and the complaining witness with copies of a statement of reasons supporting his determination. "When action is taken by [the Secretary] it must be such as to enable a reviewing court to determine with some measure of confidence whether or not the discretion which still remains in the Secretary, has been exercised in a manner that is neither arbitrary nor capricious . . . it is necessary for [him] to delineate and make explicit the basis upon which discretionary action is taken, particularly in a case such as this where the decision taken consists of a failure to act after the finding of union election irregularities." *DeVito* v. *Shultz I*, 300 F. Supp. 381, 383 (1969); see also *Valenta* v. *Brennan*, No. C 74–11 (ND Ohio 1974).

Moreover, a statement of reasons serves purposes other than judicial review. Since the Secretary's role as lawyer for the complaining union member does not include the duty to indulge a client's usual prerogative to direct his lawyer to file suit, we may reasonably infer that Congress intended that the Secretary supply the member with a reasoned statement why he determined not to proceed. "As a matter of law, . . . the Secretary is not requried to sue to set aside the election whenever the proofs before him suggest the suit *might* be successful. There remains in him a degree of discretion to select cases and it is his subjective judgment as to the probable outcome of the litigation that must control." *DeVito* v. *Shultz II*, *supra*, 72 L. R. R. M., at 2683 (emphasis supplied). But "surely Congress must have intended that courts would intercede sufficiently to determine that the provisions of Title IV have been carried out in harmony with the implementation of other provisions of [LMRDA]." *DeVito* v. *Shultz I*, *supra*, at 383. Finally, a reasons requirement promotes

thought by the Secretary and compels him to cover the relevant points and eschew irrelevancies, and as noted by the Court of Appeals in this case, the need to assure careful administrative consideration "would be relevant even if the Secretary's decision were unreviewable." 502 F. 2d, *supra*, at 88–89, n. 14.

The necessity that the reviewing court refrain from substitution of its judgment for that of the Secretary thus helps define the permissible scope of review. Except in what must be the rare case, the court's review should be confined to examination of the reasons statement, and the determination whether the statement without more evinces that the Secretary's decision is so irrational as to constitute the decision arbitrary and capricious. Thus, review may not extend to cognizance or trial of a complaining member's challenges to the factual bases for the Secretary's conclusion either that no violation occurred or that they did not affect the outcome of the election. The full trappings of adversary trial type hearings would be defiant of congressional objectives not to permit individuals to block or delay resolution of post-election disputes, but rather "to settle as quickly as practicable the cloud on incumbents title to office"; and "to protect unions from frivolous litigation and unnecessary interference with their elections." "If . . . the Court concludes . . . there is a rational and defensible basis [stated in the reasons statement] for [the Secretary's] determination, then that should be an end of this matter, for it is not the function of the Court to determine whether or not the case should be brought or what its outcome would be." *DeVito* v. *Shultz II*, 72 L. R. R. M. 2682, 2683 (1969).

Thus, the Secretary's letter of November 7, 1973, may have sufficed as a "brief statement of the grounds for denial" for the purposes of § 555 (e) of the Administra-

tive Procedure Act,[10] but plainly it did not suffice as a statement of reasons required by LMRDA. For a statement of reasons must be adequate to enable the court to determine whether the Secretary's decision was reached for an impermissible reason or for no reason at all. For this essential purpose, although detailed findings of fact are not required, the statement of reasons should inform the court and the complaining union member both the grounds of decision and the essential facts upon which the Secretary's inferences are based.

The Secretary himself suggests that the rare case that might justify review beyond the confines of the reasons statement might arise, for example, "if the Secretary were to declare that he no longer would enforce Title IV, or otherwise completely abrogate his enforcement responsibilities . . . [or] . . . if the Secretary prosecuted complaints in a constitutionally discriminatory manner . . . ." Petitioner's Brief, p. 9 n. 3. Other cases might be imagined where the Secretary's decision would be "plainly beyond the bounds of the Act . . . (or) . . . clearly defiant of the Act." *DeVito* v. *Shultz II*, 72 L. R. R. M., at 2682. Since it inevitably would be a matter of grave public concern were a case to arise where the complaining member's proofs sufficed to require judicial inquiry into allegations of that kind, we may hope that such cases would be rare indeed.

There remains the question of remedy. When the District Court determines that the Secretary's statement of reasons adequately demonstrates that his decision not

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[10] Section 555 (e), 5 U. S. C. § 555 (e) provides:

"Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial."

to sue is not contrary to law, the complaining union member's suit fails and should be dismissed. *Howard* v. *Hodgson*, 490 F. 2d 1194 (CA8 1974). Where the statement inadequately discloses his reasons, the Secretary may be afforded opportunity to supplement his statement. *DeVito* v. *Shultz I*, 300 F. Supp., *supra*, at 384; *Valenta* v. *Brennan*, *supra*.[11] The court must be mindful, however, that endless litigation concerning the sufficiency of the written statement is inconsistent with the statute's goal of expeditious resolution of post-election disputes.

The District Court may however ultimately come to the conclusion that the Secretary's statement of reasons on its face renders necessary the conclusion that his decision not to sue is so irrational as to constitute the decision arbitrary and capricious. There would then be

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[11] Judge Gesell of the District Court of the District of Columbia fashioned an acceptable procedure in *DeVito* v. *Shultz I*, 300 F. Supp. 381 (1969). Aggrieved union members complained of irregularities in the election of regular officers of International Union. They also complained of irregularities in the election of an International President Emeritus. The office of the Secretary of Labor refused to bring suit to set aside either election, supplying separate statements of reasons in the cases. Judge Gesell determined that the statement respecting the regular election of officers was inadequate, but that the statement respecting the election of a President Emeritus was sufficient. He therefore ordered the Secretary to reopen consideration of the former complaint and to submit "a fuller statement of reasons and explanation," if on reconsideration the Secretary remained determined not to bring suit. The Secretary's motion to dismiss and for summary judgment was denied without prejudice to a further submission of reasons on that aspect of the case but was granted as respects the election of the President Emeritus. Later, following the Secretary's reconsideration of the election of the regular officers, and his adherence to his determination not to file suit, Judge Gesell conducted another hearing. *DeVito* v. *Shultz II*, 72 L. R. R. M. 2682 (1969). Judge Gesell concluded on this occasion that the Secretary "satisfied the Court that there is a rational basis for his not proceeding" and granted the Secretary's motion to dismiss.

presented the question whether the District Court is empowered to order the Secretary to bring a civil suit against the union to set aside the election. We have no occasion to address that question at this time. It obviously presents some difficulty in light of the strong evidence that Congress deliberately gave exclusive enforcement authority to the Secretary.[12] See *National Railroad Passenger Corp.* v. *National Assn. of Railroad Passengers*, 414 U. S. 453, 465 (1974) (BRENNAN, J., concurring); *Nader* v. *Saxbe*, — U. S. App. D. C. —, 497 F. 2d 676, 679–680, n. 19 (1974). We prefer therefore at this time to assume that the Secretary would proceed appropriately without the coercion of a court order when finally advised by the courts that his decision was in law arbitrary and capricious.

III

The opinion of the Court of Appeals authorized review beyond the permissible limits defined in this opinion. After first stating that "judicial review of the Secretary's decision not to bring suit should extend at the very least to an inquiry into his reasons for that decision . . . ." 502 F. 2d, at 89, the court noted that "[t]he relief requested by the complaint . . . however, goes beyond such an inquiry . . . plaintiff seeks an opportunity to challenge the factual basis for [the Secretary's] conclusion either that no violations occurred or that they did not affect the

[12] USWA argues that Arts. II and III of the Constitution "do not countenance a court order requiring the executive branch, against its wishes, to institute a law suit in federal court." ". . . a judicial direction that such an action be brought would violate the separation of powers . . . [and] because the Secretary agrees with the union that Title IV does not require a new election, the lawsuit would be one lacking the requisite adversity of interest to constitute a 'case' or 'controversy' as required by Article III." Since we do not consider the question at this time of the court's power to order the Secretary to file suit, we need not address those contentions.

outcome of the election." *Ibid.* The court concluded that in that circumstance "plaintiff is entitled to a sufficiently specific statement of the factors upon which the Secretary relied in reaching his decision not to file suit so that plaintiff may have information concerning the allegations contained in his complaint." *Id.*, at 90.

But the key allegation of plaintiff's verified complaint is paragraph 18 which alleges: "Notwithstanding the fact that the Defendant Secretary's investigation has substantiated the plaintiff's allegations and notwithstanding the fact that the irregularities charged affected the outcome of the election the Defendant Secretary refuses to file suit to set aside the election." [13] Thus the Court of Appeals' opinion impermissibly authorizes the District Court to allow respondent the full trappings of an adversary trial of his challenge to the factual basis for the Secretary's decision.

IV

The District Court, pursuant to the Court of Appeals' order of remand, ordered the Secretary to furnish a statement of reasons. The petitioner did not cross-petition from the order, and petitioner and USWA conceded on oral argument that the order was proper in this case. Tr. pp. 23, 24, 52. The Secretary furnished the statement and it is attached as an Appendix to this opinion. Its adequacy to support a conclusion whether

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[13] The Secretary concedes that, because the District Court dismissed respondent's complaint for want of "jurisdiction" all of the factual allegations of this paragraph must be accepted as true. Petitioner's Brief, p. 4 n. 2. The allegation recites, however, only that the "Secretary's investigation has substantiated the plaintiff's allegations," and not also that the Secretary has found that the irregularities charged affected the outcome of the election. On the contrary, the reasons statement attached as the Appendix discloses that the Secretary found that the irregularities did not affect the conduct of the election.

the Secretary's decision was rationally based or was arbitrary and capricious, is a matter of initial determination by the District Court.

The judgment of the Court of Appeals is reversed insofar as it directs further proceedings consistent with the opinion of the Court of Appeals, and that court is directed to enter a new order that the proceedings on remand be consistent with this opinion of this Court.

So ordered.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73 0954

WALTER BACHOWSKI, PLAINTIFF

v.

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor, and UNITED STEELWORKERS OF AMERICA, AFL–CIO–CLC, DEFENDANTS

STATEMENT OF THE SECRETARY OF LABOR

On November 12, 1973, this Court, upon oral argument, dismissed the Complaint filed herein by the plaintiff, and further denied plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. On appeal, the United States Court of Appeals for the Third Circuit, in a Judgment entered on July 26, 1974, ordered that the aforementioned Judgment of the District Court be vacated and the cause remanded for further proceedings consistent with the Opinion of the Third Circuit filed on July 26, 1974, as amended September 3, 1974.

On remand, this Court ordered the Secretary of Labor to furnish a statement of the reasons and explanations underlying his decision not to file suit pursuant to the complaint received from Mr. Walter Bachowski, a member in good standing of the United Steelworkers of America, AFL–CIO–CLC (hereinafter referred to as the International).

Accordingly, defendant, Secretary of Labor, is furnishing the following information. However, it is respect-

fully submitted that defendant, Secretary of Labor, in furnishing this statement does not waive any legal claims raised in connection with this matter.[14]

Pursuant to a complaint received on June 21, 1973 from Mr. Walter Bachowski, the Secretary of Labor conducted an investigation of the February 13, 1973 election conducted by the International for the office of District Director, District 20. District 20 is the fourth largest Steelworker District and covers eight contiguous counties in Western Pennsylvania, running from Pittsburgh in the South to Erie in the North, and Ohio to the West. At the time of the election, District 20 was comprised of approximately 67,419 members.

In total, the Secretary's representatives investigated 80 of District 20's 190 local unions, including all 27 of the former 50 locals (the Secretary has found from past experience that former District 50 locals have encountered an unusual number of election related problems due to their recent assimilation into the Union). In formulating an investigative plan the Department of Labor focused upon and investigated each and every local brought to its attention by Mr. Bachowski, both orally and in his written complaint. Investigators, while in the geograpical areas of the locals designated by Mr. Bachowski, reviewed additional local unions on a random basis in those areas. Also, red flag locals were selected on a district wide basis where, for example, voter turnouts appeared to be inordinately high. In addition to the 80 in depth local union investigations, investigators interviewed numerous individuals including members, union officers and Mr. Bachowski himself concerning the events surrounding the District 20 election. Investigators also

[14] Defendant, Secretary of Labor, now has pending before the Supreme Court a Petition for Writ of Certirari to the United States Court of Appeals for the Third Circuit.

reviewed and examined documentary evidence for further investigative leads or potential violations. During the course of the entire proceeding, investigators worked hand in hand with Mr. Bachowski on an ongoing basis.

Because of the size of District 20 and the obvious limitations on available manpower (the Department of Labor was concurrently investigating elections conducted in five other Districts as well), it was not possible to investigate each and every local union in District 20. However, the above described investigative design was broadly conceived and was reasonably calculated to disclose all violations which may have occurred in the District wide election.

Therefore, it is readily apparent the Department conducted a thorough and exhaustive investigation into the District 20 election. Set forth below is a detailed analysis of the investigative findings, along with the numerical estimates of the votes which may have been affected as a result of these violations. In reaching these numerical estimates, we have not considered figures which constitute a reasonably probable effect, but rather, will set forth votes which have been calculated to a maximum theoretical possibility. By using these maximized figures, we are giving in most instances the benefit of the doubt to Mr. Bachowski. For example, Local Union 2789 which will be discussed herein failed to conduct an election. Thus, by assuming that the entire membership of 249 would have voted, nad moreover would have voted unanimously for Mr. Bachowski, we arrived at the maximized figure for possible effect on outcome of 249 votes. This method of computation, while theoretically possible, is highly unlikely, since, for example, in the entire District only about one-third of the members voted in the election. Thus, the reasonable probability in this Local Union is that only approximately one-third of the mem-

bers would have voted had there been an election, and that those voting would not have given Mr. Bachowski an unanimity of the vote.

(1) *Local Union 2203*

The investigation in this Local Union disclosed a failure to mail a notice of the election to ten members working on one employer site, and consequently, they were never apprised of the election and did not vote. Thus, ten members were potentially denied the right to vote in this Local Union as a result of the failure to mail notice of the election as required by Section 401 (e) of the Act. In arriving at this figure of ten, we would note, however, that since only nine of the seventeen members at the other employer location voted, it seems highly unlikely that all ten members would have voted in the election had they been notified.

(2) *Local Union 2789*

The files indicate that Local Union 2789 voted at its monthly membership meeting not to conduct an election because of a lack of funds. Accordingly, no election was conducted. However, since the Local Union was obligated by law to conduct an election, it was concluded that the total membership of 249 were potentially denied the right to vote in violation of Section 401 (a) of the Act. As noted above, in computing the total number of votes that may have been affected by this violation, we have included the entire membership of the Local Union, and have further assumed that the entire membership may have voted for Mr. Bachowski.

(3) *Local Union 3186*

This Local Union failed to provide adequate safeguards to insure a fair election. For example, the persons conducting the election hand-carried ballots to members at their work stations, who were then permitted to vote.

There was no specific voting area and no voter eligibility lost was used. The entire conduct of this election left a great deal to be desired. It was thus concluded that the Local Union failed to provide adequate safeguards to insure a fair election and that this violation "may have affected the outcome" of the election to the extent of 16 votes. This figure of 16 votes represents the entire margin by which Kluz prevailed over Bachowski.

(4) *Local Union 3713*

The investigation of this Local Union disclosed very loose ballot control (many ballots were found lying around the grounds of the employer), and as a result the Local was unable to account for 39 ballots. The union thus failed to provide adequate safeguards to insure a fair election and this violation "may have affected" 124 votes. This figure, as in the previous Local, represents the full margin of victory by Kluz over Bachowski.

(5) *Local Union 7496*

This Local Union, which is comprised of six members, failed to conduct an election. Our investigation disclosed that these members were eligible to vote in the election and thus, the six members were denied the right to vote in violation of Section 401 (e) of the Act. For purposes of possible effect on outcome, it is assumed that all six members would have voted had an election been conducted and that all six members would have voted for Bachowski.

(6) *Local Union 7749*

This Local Union, consisting of 25 members, failed to schedule and conduct an election. Although there appeared to be voter apathy in this Local Union, it was concluded that these 25 members had been denied the right to vote. Hence, the figure of 25 was assigned as the potential "effect on the outcome."

(7) *Local Union 12055*

The 51 members of this Local Union work at four separate employer locations. The investigative files indicated that 38 members at three of those sites were not notified of the election in violation of Section 401 (e) of the Act. In addition, the investigation disclosed that ballots were distributed and received in such a manner that secrecy could not be maintained. All 13 members voting at this location cast their ballots in favor of Kluz and thus it was considered that these 13 ballots may have been affected as a result of this violation. Thus, in this Local Union, a total potential effect on outcome of 51 votes was derived by assuming that the 38 members not notified would all have voted and cast their ballots in favor of Bachowski, and that the 13 members were influenced by the non-secret conditions to vote for Kluz.

(8) *Local Union 12059*

This Local Union consists of approximately 185 members employed at two separate locations. The investigation revealed that nine members at one of these locations were not mailed notices of the election as required. The file further revealed that these members were in fact eligible to vote. Thus, it was concluded that the outcome of this election may potentially have been affected to the extent of eight votes as a result of this violation, since one of the nine members who was not notified of the election actually voted.

(9) *Local Union 13972*

The investigative file disclosed that five members of this Local Union who were working at a plant site removed from the remainder of the local members were denied an opportunity to vote in this election. The files

disclosed that the Election Committee failed to provide facilities for these members. Thus, five votes may have been affected by the violation in this Local Union.

(10) *Local Union 14210*

A review of the investigative file in this Local Union disclosed two violations. The evidence indicated that one member was denied the right to vote; the Local failed to provide voting facilities for a member who was unable to reach the polls because of a work conflict. In addition, the evidence indicated that an ineligible member was permitted to vote in violation of Section 401 (e) of the Act. Thus, two members were potentially affected by the violations that occurred in this Local Union.

(11) *Local Union 14661*

In this Local Union, the investigation revealed that certain members marked their ballots in such proximity to the registration table that secrecy of the ballot may have been compromised. The investigation also revealed evidence that one member saw how another member voted. The result in this election was Kluz 34, Bachowski 20, and Brummitt 11. The possible effect on outcome was 14, the margin of victory by Kluz over Bachowski.

(12) *Local Union 14768*

The files reveal that although an election was conducted in this Local Union, no return sheet was submitted to the International. The evidence indicated that because the Financial Secretary thought he had not conducted the election properly, he destroyed all records and did not submit a return. Thus, the 17 members casting ballots in this election were denied a right to vote in violation of Section 401 (e) of the Act. (It should be noted that the union purports to have evidence of the actual return in this Local Union, which showed Kluz winning by one vote.)

(13) *Local Union 14800*

A review of the investigative files on Local 14800 revealed the existence of three violations. The evidence very strongly indicated that the local failed to provide adequate safeguards to insure a fair election in violation of Section 401 (c) of the Act. There was evidence that ballots were submitted for some 40 members who did not in fact vote in the election. Moreover, individuals other than election tellers had access to and handled ballots without adequate supervision. In view of the lack of adequate ballot control and the strong indication of ballot fraud in this Local Union, it was concluded by the Secretary that all 110 votes received by Kluz should be considered as possibly having been affected by this violation. (118 votes were cast in the election with Bachowski receiving 3 and Brummitt receiving 5.) The evidence also indicated that 78 members at three employer locations were not adequately notified of the election in violation of Section 401 (e) of the Act. Since 38 of these members voted, only 40 members may be considered for purposes of effect on outcome (the 38 who voted were included in the figure of 110 above). Finally, the file disclosed that funds of Local Union 14800 were expended for a campaign rally supporting the candidacy of Mr. Kluz. Evidence tends to indicate that 50 to 100 members attended the party, including some officers and members of locals other than 14800. Thus, using maximized figures, 100 votes may have been affected by this violation (in addition to the total number of members already included above). However, we would note that the union has indicated that many members attending this party were ardent Kluz supporters. Thus, the illegal expenditure would have had little effect, if any, on their voting preference. We were unable to identify the majority of the members of the party; the union contends that most of

the members in attendance were members of Local Union 14800, whose entire vote was regarded as possibly affected by other violations as noted above.

(14) *Local Union 14820*

The investigative file in this Local Union indicated that there was a failure to maintain secrecy of the ballot in violation of Section 401 (a) of the Act, as well as a failure to adequately notify members of the election in violation of Section 401 (e) of the Act. The investigation disclosed that 22 ballots cast in this election were signed on the back by the voting member—an obvious violation of secrecy. Although officers of the Local claim they were not aware of this until a subsequent review of the ballots with a Department of Labor investigator, this does not cancel the violation, which may have affected 22 votes. The evidence also indicated 39 members at two employer sites were not notified of the election. Assuming that all 39 would have voted and that they would have cast their votes for Bachowski, 39 votes may have been affected by this violation. Finally, the file disclosed that through inaccurate tallies by the responsible local union officers, Bachowski received one less vote than his entitlement while Kluz received one additional vote. Hence, an extra two votes must be considered as having been affected by the Local's failure to properly credit the votes to the proper candidates.

(15) *Local Union 14945*

The investigative file in this Local Union revealed that ballots were marked on tables by voters in close proximity who were able to observe how other members were voting their ballots. Thus, the Local failed to observe secrecy of the ballot as required by Section 401 (c) of the Act. Since the margin of victory by Kluz over

Bachowski was 18, 18 votes may have been affected by the existence of this violation.

(16) *Local Union 15370*

This Local Union failed to provide adequate safeguards to insure a fair election in that the ballot control was less than desirable. Persons not authorized handled ballots at one or more times throughout the period of the election. Although additional investigation failed to disclose any evidence that would indicate other irregularities such as fraud or ineligible members voting, it was nevertheless concluded that this lack of adequate safeguards may have affected ten members in this local—the margin of votes achieved by Kluz over Bachowski.

(17) *Local Union 15420*

Evidence disclosed that this Local Union failed to maintain adequate safeguards to insure a fair election. Union records indicated that Kluz received 15 votes, Bachowski none, and Brummitt one. However, the Secretary's investigation revealed that only 13 members were listed as voting. It was also learned that this local did not maintain adequate control of the ballots a fact which may in no small part account for the deviation between the number of votes indicated as having been cast and the number of members actually voting. Thus, the Secretary of Labor concluded that all 16 members voting in this election may have been affected by the local's failure to provide adequate safeguards to insure a fair election.

To recapitulate, we are setting forth below a list of the Locals in which violations occurred and the votes which may potentially have been calculated to a theoretical probability and represent the maximum number of votes involved.

1. Local Union 2203 — 10 votes
2. Local Union 2789 —249 votes
3. Local Union 3186 — 16 votes
4. Local Union 3713 —123 votes
5. Local Union 7496 — 6 votes
6. Local Union 7749 — 25 votes
7. Local Union 12055— 51 votes
8. Local Union 12059— 8 votes
9. Local Union 13972— 5 votes
10. Local Union 14210— 2 votes
11. Local Union 14661— 14 votes
12. Local Union 14768— 17 votes
13. Local Union 14800—250 votes
14. Local Union 14820— 63 votes
15. Local Union 14945— 18 votes
16. Local Union 15370— 10 votes
17. Local Union 15420— 16 votes

By adding the total of the votes set forth in the local unions above, the election for the position of District Director, District 20, may theoretically have been affected by violations disclosed through investigation to the extent of 884 votes. Since the margin of victory by which Mr. Kluz prevailed over Mr. Bachowski was 907 votes [15] it was the Secretary of Labor's conclusion that the violations which occurred could not have affected the outcome of the election. Moreover, we would note the Secretary like any other litigant must be cognizant of all factors entering into prosecution of a Title IV case. In this regard, the union has raised serious question concerning Bachowski's invocation of his internal union remedies, notably his failure to carry a complaint to the

[15] The results in the election for the position of District Director, District 20 were as follows: Kluz—10,558 votes; Bachowski—9,651 votes; Brummitt—3,566 votes.

International Tellers whose function is to rule initially upon the validity of election protests. Mr. Bachowski chose to bypass this step and to carry his protest directly to the Executive Board.

The plaintiff has correctly alleged in this complaint and the Secretary has confirmed through investigation, that certain violations of Title IV occurred in the election for District Director for District 20. However, the Secretary concluded, after review of the investigative findings that the votes which may have been affected by the violations could not have altered the outcome of the election. In *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 389 U. S. 463 (1968) the Supreme Court noted at page 427 that:

> The Secretary may not initiate an action until his own investigation confirms that a violation of section 401 *probably infected* the challenged election. (Emphasis added.)

Thus, the finding of violations by the Secretary of Labor does not mature into an actionable case unless he has evidence that such violations "probably infected" the election in question. In this case, the Secretary found violations, but concluded that they did not affect the outcome of the election.

CONCLUSION

The extensive investigation conducted by the Department of Labor focused, among other things, on all the specific matters raised by Mr. Bachowski. As has been shown above, certain violations were disclosed in the conduct of this election, however, these violations could not have affected its outcome. Therefore, it is submitted that the Secretary of Labor in arriving at his determination not to file suit to set aside the District 20 election

properly discharged his statutory duties under Title IV of the Act.

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Filed: November 11, 1974.

SUPREME COURT OF THE UNITED STATES

No. 74-466

John T. Dunlop, Secretary of Labor, Petitioner, *v.* Walter Bachowski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June 2, 1975]

MR. CHIEF JUSTICE BURGER, concurring.

I join the opinion of the Court with the understanding that the Court has fashioned an exceedingly narrow scope of review of the Secretary's determination not to bring an action on behalf of a complainant to set aside an election. The language and purposes of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. § 481, have required the Court to define a scope of review much narrower than applies under 5 U. S. C. § 706 (2) (A) in most other administrative areas. The Court's holding must be read as providing that the determination of the Secretary not to challenge a union election may be held arbitrary and capricious only where the Secretary's investigation, as evidenced by his statement of reasons, shows election irregularities that affected its outcome as to the complainant, *Wirtz* v. *Glass Bottle Blowers*, 389 U. S. 463, 472 (1968), and that notwithstanding the illegal conduct so found the Secretary nevertheless refuses to bring an action and advances no rational reason for his decision.

SUPREME COURT OF THE UNITED STATES

No. 74-466

John T. Dunlop, Secretary of Labor, Petitioner, *v.* Walter Bachowski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June 2, 1975]

MR. JUSTICE REHNQUIST, concurring in part and dissenting in part.

The parties to this case will have to be excused if they react with surprise to the opinion of the Court. Instead of deciding the issue presented in the Government's petition for certiorari, the Court decides an issue about which the parties no longer disagree; to compound the confusion, the reasoning adopted by the Court to resolve the issue it does decide is quite unusual unless it is intended to foreshadow disposition of the issue upon which the Court purports to reserve judgment.

I

After exhausting intraunion remedies, respondent filed a complaint with the Secretary of Labor alleging violations of § 401 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U. S. C. § 481. The Secretary conducted an investigation and concluded that no civil action to set aside the challenged election was warranted. Respondent was so notified* and he

*Respondent was notified by telephone that the Secretary had decided not to file suit to set aside the election. App. 5A. On the day respondent filed his complaint, the Labor Department sent him

then sought to challenge the Secretary's refusal to file suit. The complaint alleged that the Secretary had refused to file suit, "[n]otwithstanding the fact that the Defendant Secretary's investigation has substantiated the [respondent's] allegations," and that respondent "has not been given a statement of reasons why the Defendant Secretary will not file suit." App. 5A. Respondent asked the court to order the Secretary to file suit to set aside the election and "direct the Defendant Secretary to make available for examination by the [respondent] all evidence it has obtained concerning its investigation of the aforesaid election." App. 6A. The Court of Appeals, reversing the District Court, held that the Secretary's refusal to file an action to set aside the election was judicially reviewable. In considering "the proper scope of such judicial review," the Court of Appeals concluded that the Secretary should prepare a statement of reasons, presumably to assist in judicial review and also to ensure that proper deference was paid to the Secretary's determinations. 502 F. 2d 79, 88–89 (CA3 1974).

Notwithstanding contrary verbiage, the approach of this Court is not materially different. The Court expressly reserves "the question whether the District Court is empowered to order the Secretary to bring a civil suit against the union to set aside the election," *ante*, p. 14, but its justification for ordering the Secretary to provide a statement of reasons appears premised upon an affirmative disposition of the reserved question: the Secretary

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a letter notifying him of the Secretary's decision in the following manner:

"Pursuant to Sections 402 and 601 of the Act, an investigation was conducted by this Office. Based on the investigative findings, it has been determined, after consultation with the Solicitor of Labor, that civil action to set aside the challenged election is not warranted. We are, therefore, closing our file in this case as of this date." Brief for Respondent, at 1A.

must provide a statement of reasons "to enable the reviewing court intelligibly to review the Secretary's determination," *ante*, p. 10. I cannot subscribe to judicial reasoning of this convoluted sort.

II

In the first place, whether or not a statement of reasons must be supplied by the Secretary is not an issue presented by this case. The single question presented by the Secretary's petition for certiorari is:

> "Whether a disappointed union office seeker may invoke the judicial process to compel the Secretary of Labor to bring an action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 to set aside a union election." Petition for Certiorari, at 2.

The Secretary did not seek review of the holding by the court of appeals that a statement of reasons was required and instead proceeded to comply with that portion of the appellate court's holding by filing the statement of reasons that is appended to the opinion of the Court. As the Secretary states: "We do not contest this portion of the court's holding." Brief for Government, at 5 n. 2.

Such a concession appears well founded, although not for the reasons stated by the Court. Independent of any connection with judicial review, a statement of reasons is required by statute. The Administrative Procedure Act (APA), which is applicable to LMRDA, 29 U. S. C. § 526, states:

> "Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a

brief statement of the grounds for denial." 5 U. S. C. § 555 (e).

See S. Doc. No. 248, 79th Cong., 2d Sess., 206, 265 (1946). Here, where the Secretary is charged with the responsibility of enforcing the rights of individual union members and has established a procedure for the filing of a complaint with him by such members, § 555 (e) would appear to be applicable.

The acquiescence of the Secretary has removed this issue from the case. Since the majority persists in deciding it, I concur in the result on the basis of the APA, which is not dependent upon the availability of judicial review. This ground, in my view, furnishes a sounder reason for concluding that a statement of reasons must be furnished than does the reasoning of the Court.

III

It remains to consider the only question presented by the Government's petition for certiorari: Is judicial review available at the behest of respondent to force the Secretary to file a civil action to set aside the union election?

Respondent does not rely upon any provision of LMRDA as authorizing this post-election law suit, for indeed there is none. Instead respondent relies upon the APA judicial review provisions, 5 U. S. C. §§ 701–706. App. 3A. The judicial review provisions of the APA do not apply, however, "to the extent that (1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." 5 U. S. C. §-701 (a).

I agree with the Court that 29 U. S. C. § 483 does not preclude judicial review of the kind sought in this case. That section expresses the congressional judgment that the civil action filed by the Secretary under 29 U. S. C.

§ 482 (b) shall be the exclusive remedy "for challenging an election already conducted." Respondent recognizes that this Court's decision in *Calhoon* v. *Harvey*, 379 U. S. 134 (1964), precludes him from proceeding directly against the union, a result that I believe is compelled by § 483. But § 483 is silent about the availability of relief to force the Secretary to pursue the remedy that is exclusively his, and under this Court's decisions a prohibition of judicial review is not to be lightly inferred. *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 140–141 (1967).

I reach a contrary conclusion, however, with regard to the second clause of § 701 (a). It seems to me that prior decisions of this Court establish that the Secretary's decision to file or not to file a complaint under § 482 is precisely the kind of "agency action . . . committed to agency discretion by law" exempted from the judicial review provisions of the APA.

In LMRDA cases, this Court has repeatedly recognized the exclusive role in post-election challenges played by the Secretary. In *Calhoon* v. *Harvey*, 379 U. S. 134, 140–141 (1964) (footnote omitted), we said:

> "Section 402 of Title IV, as has been pointed out, sets up an exclusive method for protecting Title IV rights, by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of Title IV. Upon complaint the Secretary investigates and if he finds probable cause to believe that Title IV has been violated, he may file suit in the appropriate district court. It is apparent that Congress decided to utilize the *special knowledge and discretion* of the Secretary of Labor in order best to serve the public interest. . . . In so doing Congress, with one exception not here relevant, decided not to permit indi-

viduals to block or delay union elections by filing federal-court suits for violations of Title IV. *Reliance on the discretion of the Secretary* is in harmony with the general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts. Without setting out the lengthy legislative history which preceded the passage of this measure, it is sufficient to say that we are satisfied that the Act itself shows clearly by its structure and language that the disputes here, basically relating as they do to eligibility of candidates, for office, fall squarely within Title IV of the Act and are to be resolved by the administrative and judicial procedures set out in that Title." (Emphasis added.)

See also *Wirtz* v. *Bottle Blowers Assn.*, 389 U. S. 463, 473–474 (1968). More recently, in *Trbovich* v. *United Mine Workers*, 404 U. S. 528 (1972), we said, in the context of claims presented by an intervenor that had not been included in the Secretary's complaint:

"With respect to litigation by union members, then, the legislative history supports the conclusion that Congress intended to prevent members from pressing claims *not thought meritorious by the Secretary*, and from litigating in forums or at times different from those chosen by the Secretary.

. . . . .

"[W]e think Congress intended to insulate the union from *any complaint that did not appear meritorious to both a complaining member and the Secretary*. Accordingly, we hold that in a post-election enforcement suit, Title IV imposes no bar to

> intervention by a union member, so long as that intervention is limited to the claims of illegality presented by the Secretary's complaint." *Id.*, at 536, 537 (footnote omitted) (emphasis added).

The exclusivity of the Secretary's role in the enforcement of Title IV rights is no accident. It represents a conscious legislative compromise adopted to balance two important but conflicting interests: vindication of the rights of union members and freedom of unions from undue harassment. See *Wirtz, supra,* 389 U. S., at 470–471. This Court has recognized unreviewable discretion both in the labor area, *Vaca* v. *Sipes,* 386 U. S. 171, 182 (1967), and in other civil areas, *The Confiscation Cases,* 7 Wall. 454 (1869); *FTC* v. *Klesner,* 280 U. S. 19, 25 (1929). The Court of Appeals sought to distinguish this line of cases on the grounds that it involved "vindication of societal or governmental interest, rather than the protection of individual rights," 502 F. 2d, at 87. While the Secretary points out the artificiality of this purported distinction and refutes it as applied to these cases, Brief for Petitioner, at 30, a more basic response is that such considerations provide no basis for contravention of legislative intent:

> "Congress for reasons of its own decided upon the method for the protection of the 'right' which it created. It selected the precise machinery and fashioned the tool which it deemed suited to that end. . . . All constitutional questions aside, it is for Congress to determine how the rights which it creates shall be enforced." *Switchmen's Union* v. *National Mediation Board,* 320 U. S. 297, 301 (1943).

The Court recognizes the power of these arguments, if only by understatement, when it acknowledges that any argument for judicial review of the Secretary's deter-

mination "obviously presents some difficulty in light of the strong evidence that Congress deliberately gave exclusive enforcement authority to the Secretary." *Ante*, p. 14 (footnote omitted). In my view the parties to this litigation are entitled to adjudication of the issue upon which this Court granted certiorari. I would accordingly reverse the judgment of the Court of Appeals insofar as it held that the Secretary's refusal to institute an action under 29 U. S. C. § 482 is judicially reviewable under the provisions of the APA, 5 U. S. C. §§ 701–706.